

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

THOMAS C. DIBIASE,

Petitioner,

vs.

CHRISTOPHER LAROSE,

Respondent.

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CASE NO. 1:19-CV-00129
OPINION AND ORDER

[Resolving Doc. 5]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 17, 2019, Petitioner Thomas DiBiase asked the Court to grant him a writ of habeas corpus under [28 U.S.C. § 2254](#).¹ In response, Respondent moved to transfer this case to the Sixth Circuit, arguing that DiBiase's petition is a second or successive petition.²

On August 5, 2019, Magistrate Judge Kathleen B. Burke recommended that the Court find that DiBiase's petition is a second or successive petitioner and grant Respondent's motion to transfer.³

Objections to Magistrate Judge Burke's Report and Recommendation ("R&R") were due by August 19, 2019. Petitioner DiBiase did not file objections to the R&R.

The Federal Magistrates Act requires a district court to review *de novo* only those portions of a R&R to which the parties have objected.⁴ Absent objection, a district court may adopt the R&R without review.⁵

¹ Doc. 1.

² Doc. 5.

³ Doc. 9.

⁴ **Error! Main Document Only.** 28 U.S.C. § 636(b)(1).

⁵ **Error! Main Document Only.** *Thomas v. Arn*, 474 U.S. 140, 149 (1985); L.R. 72.3(b).

Because no party has objected to the Report and Recommendation, this Court may adopt the R&R without further review. Moreover, having conducted its own review of the petition and record, the Court agrees with the conclusions in the R&R.

Accordingly, the Court **ADOPTS** Magistrate Judge Burke's Report and Recommendation and incorporates it fully herein by reference. The Court **GRANTS** Respondent's motion and transfers DiBiase's petition to the Sixth Circuit pursuant to 28 U.S.C. § 1631.

IT IS SO ORDERED.

Dated: September 30, 2019

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE